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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93678; File No. SR-NSCC-2021-014]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Enhance the Transparency of the Calculation of the Backtesting Charge

November 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 23, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of NSCC consists of modifications to Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules & Procedures (“Rules”) to provide additional transparency into the calculation of the Backtesting Charge that may be collected by NSCC as part of Members’ Required Fund Deposits to the Clearing Fund

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

by clarifying that such calculation does not include amounts already collected from a Member as a Backtesting Charge, as described in greater detail below.<sup>5</sup>

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) Purpose

NSCC is proposing amendments to the Rules that would provide additional transparency into the calculation of the Backtesting Charge by clarifying that such calculation does not include amounts already collected from a Member as a Backtesting Charge. NSCC is not proposing to change how it calculates Members' backtesting coverage or any applicable Backtesting Charge and is proposing only to include additional transparency in the Rules in describing those calculations, as described in greater detail below.

*Overview of NSCC's Clearing Fund and the Backtesting Charge*

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the

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<sup>5</sup> Terms not defined herein are defined in the Rules, available at [http://dtcc.com/~media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf).

Clearing Fund and monitoring its sufficiency, as provided for in the Rules.<sup>6</sup> The Required Fund Deposit serves as each Member's margin. The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a "default").<sup>7</sup> The aggregate of all Members' Required Fund Deposits constitutes the Clearing Fund of NSCC. NSCC would access its Clearing Fund should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio. Pursuant to the Rules, each Member's Required Fund Deposit consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.<sup>8</sup>

NSCC employs daily backtesting to determine the adequacy of each Member's Required Fund Deposit. NSCC compares the Required Fund Deposit<sup>9</sup> for each Member with the simulated liquidation gains/losses using the actual positions in the Member's portfolio, and the actual historical security returns. NSCC investigates the cause(s) of any backtesting deficiencies. As a part of this investigation, NSCC pays particular attention to Members with backtesting deficiencies that bring the results for that Member below the

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<sup>6</sup> See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), id. NSCC's market risk management strategy is designed to comply with Rule 17Ad-22(e)(4) under the Act, where these risks are referred to as "credit risks." 17 CFR 240.17Ad-22(e)(4).

<sup>7</sup> The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that a Member defaults on a financial or other obligation to NSCC. See Rule 46 (Restrictions on Access to Services) of the Rules, supra note 6.

<sup>8</sup> Supra note 6.

<sup>9</sup> For backtesting comparisons, NSCC uses the Required Fund Deposit amount without regard to the actual collateral posted by the Member.

99 percent confidence target (*i.e.*, greater than two backtesting deficiency days in a rolling twelve-month period) to determine if there is an identifiable cause of repeat backtesting deficiencies. NSCC also evaluates whether multiple Members may experience backtesting deficiencies for the same underlying reason.

The Backtesting Charge, as described in Section I(B)(3) of Procedure XV, may be an additional component of a Member's Required Fund Deposit that NSCC may assess at either the start of the day (referred to in the Rules as the "Regular Backtesting Charge") or on an intraday basis (the "Intraday Backtesting Charge").<sup>10</sup> More specifically, NSCC may assess a Backtesting Charge against any Member that has a 12-month trailing backtesting coverage below the 99 percent backtesting coverage target. If assessed, a Member's Backtesting Charge is generally equal to the Member's third largest deficiency, when calculating the Regular Backtesting Charge, and fifth largest deficiency, when calculating the Intraday Backtesting Charge, that occurred during the previous 12 months.<sup>11</sup> As described in Procedure XV, NSCC may adjust the Backtesting Charge if it determines that circumstances particular to a Member's settlement activity and/or market price volatility warrant a different approach to determining or applying such charge in a manner consistent with achieving NSCC's backtesting coverage target.<sup>12</sup>

NSCC calculates the Backtesting Charge monthly and, based on those calculations, may either impose a new Backtesting Charge or remove an existing Backtesting Charge, or it may either increase or decrease a Member's existing Backtesting Charge as necessary to maintain its target backtesting coverage. When

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<sup>10</sup> Section I(B)(3) of Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, supra note 6. See also Release No. 79167 (October 26, 2016), 81 FR 75883 (November 1, 2016) (File Nos. SR-FICC-2016-006; SR-NSCC-2016-004).

<sup>11</sup> Id.

<sup>12</sup> Id.

calculating a Member's backtesting coverage for purposes of the Backtesting Charge and when calculating any applicable Backtesting Charge, NSCC does not include amounts already collected from that Member as a Backtesting Charge. As described above, the objective of the Backtesting Charge is to increase Required Fund Deposits for Members that are likely to experience backtesting deficiencies by an amount sufficient to maintain such Member's backtesting coverage above the 99 percent confidence threshold. By excluding the Backtesting Charge in these calculations, NSCC is able to more accurately evaluate Members' historical backtesting deficiencies and coverage ratios to determine if any adjustment to a Member's Backtesting Charge is appropriate.

*Proposed Revisions to Clarify the Calculation of the Backtesting Charge*

NSCC is proposing to revise Section I(B)(3) of Procedure XV to provide additional transparency into the calculation of the Backtesting Charge.<sup>13</sup> As described above, Procedure XV states that the Backtesting Charge may apply to Members that have 12-month trailing backtesting coverage below the 99 percent backtesting coverage target and that the Regular Backtesting Charge is calculated as the Member's third largest deficiency that occurred during the previous 12 months, and the Intraday Backtesting Charge is calculated as the Member's fifth largest deficiency in that same time period. Currently, however, Procedure XV does not state that NSCC does not include amounts already collected as a Backtesting Charge from a Member in calculating either that Member's backtesting coverage or calculating any applicable Backtesting Charge.

Therefore, in order to add additional transparency to the Rules regarding the calculation of the Backtesting Charge, NSCC is proposing to amend Section I(B)(3) of Procedure XV to state that, for purposes of calculating a Member's backtesting coverage and any applicable Backtesting Charge, NSCC would not include amounts already collected as a Backtesting Charge from that Member.

## 2. Statutory Basis

NSCC believes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Act,<sup>14</sup> and Rule 17Ad-22(e)(23)(ii) promulgated under the Act,<sup>15</sup> for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions.<sup>16</sup> NSCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes would clarify and improve the transparency of the Rules regarding the calculation of the Backtesting Charge.

More specifically, the proposed changes would amend Section I(B)(3) of Procedure XV to provide Members with additional information regarding the calculation of the Backtesting Charge by stating that, for purposes of calculating a Member's backtesting coverage and any applicable Backtesting Charge, NSCC would not include amounts already collected as a Backtesting Charge from that Member. By enhancing the

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<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

clarity and transparency of the Rules, the proposed changes would allow Members to more efficiently and effectively conduct their business in accordance with the Rules, which NSCC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, NSCC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.<sup>17</sup>

Rule 17Ad-22(e)(23)(ii) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.<sup>18</sup> By providing Members with additional information regarding the calculation of the Backtesting Charge and clarifying that it would not include amounts already collected as a Backtesting Charge from that Member in such calculations, the proposed changes improve the transparency of the Rules. By providing Members with additional information that would enable them to evaluate the risks and material costs they incur by participating in NSCC, NSCC believes the proposed changes are consistent with the requirements of Rule 17Ad-22(e)(23)(ii).<sup>19</sup>

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposed rule changes would impact competition. The proposed rule changes would merely enhance the clarity and transparency of the Rules and is not proposing any changes to the calculation of Members' Required Fund Deposits. Therefore, the proposed changes would not affect NSCC's operations or the

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<sup>17</sup> Id.

<sup>18</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>19</sup> Id.

rights and obligations of membership. As such, NSCC believes the proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

NSCC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and paragraph (f)<sup>21</sup> of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f).



suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2021-014 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2021-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2021-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>22</sup> 17 CFR 200.30-3(a)(12).